



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1995

Ms. Sharon Y. Lowe
Counsel
Intergovernmental Programs Division
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR95-261

Dear Ms. Lowe:

The General Services Commission (the "commission"), on behalf of the State Energy Conservation Office, has asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.¹ This request was assigned ID# 31505.

The commission received two requests for information concerning the awarding of a contract. One requestor asked for "the winning bid for the Caprice NGV Taxi Program," but states he is not seeking information that is made confidential under chapter 552 of the Government Code. The other requestor asked for "the public record on the award determination with respect to the Caprice NGV Taxi Program." You have submitted to this office for review documents that you indicate are responsive to both requests. You contend that this information is excepted from disclosure pursuant to sections 552.107(1), 552.110, and 552.111 of the Government Code.

Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592

¹You have previously indicated to this office that, pursuant to interagency contract, the commission provides administration for the energy office. See Gov't Code § 771.003 (Interagency Cooperation Act). The energy office, which has statutory authority to implement or assist in implementing energy efficiency projects at state agencies, *id.* § 447.008; see also *id.* § 2305.041 (concerning state energy conservation program), is a division of the Office of the Governor.

(1991) at 2. In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts definition of a trade secret. The Restatement provides six factors in determining if information constitutes a trade secret. Those factors are:

- (1) the extent to which the information is known outside of the company;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 552 (1990) at 2.

This office must accept a claim that a document is excepted as a trade secret if a *prima facie* case for exception is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991) at 2. You indicated that EDO Corporation ("EDO") had submitted documents to the commission that were "marked as containing trade secrets or other proprietary information." As provided in 552.305 of the Government Code, this office invited EDO to submit reasons why the information should be withheld. However, EDO has not responded to that invitation, which was sent to the address you provided this office. Since neither EDO nor the commission have established a *prima facie* case that the information at issue is a trade secret, there is no basis on which this office may conclude that the information is a trade secret. The information at issue is not excepted from disclosure under section 552.110. Open Records Decision Nos. 552 (1990), 402 (1983).

You contend that other records at issue are excepted from disclosure under sections 552.107(1) and 552.111 of the Government Code. Section 552.111 excepts from disclosure interagency or intraagency communications "consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5; *see also* Open Records Decision No. 631 (1995) at 3.

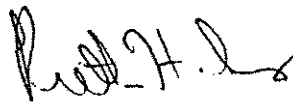
We have marked the information that is excepted from disclosure pursuant to section 552.111. We note that one of the documents you contend is excepted from disclosure appears to be a scoring sheet on which the commission apparently based its decision to award the bid. To the extent that information on the scoring sheet has already been disclosed, that information may not now be withheld from disclosure under section 552.111. Gov't Code § 552.007; Open Records Decision No. 192 (1978) at 3 (governmental body may not make selective disclosure of internal memoranda). Information on the scoring sheet that has not already been disclosed may be withheld under section 552.111, as it is opinion reflecting the department's deliberative or policymaking process.

You contend that another document, titled "Proposed Interview Questions" is excepted from disclosure pursuant to section 552.111. If the document is a preliminary draft or if the document consists of recommendations that have not otherwise been disclosed, it may also be withheld under section 552.111. *See* Open Records Decision No. 615 (1993).

Section 552.107(1) provides an exception from disclosure for information that "an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." This provision excepts information within the attorney-client privilege that contains legal advice, legal opinion, or that reveals client confidences. Open Records Decision Nos. 574 (1990), 462 (1987) at 9-11. We note that some of the information for which you asserted section 552.107(1) protection is already excepted under section 552.111. You may withhold the information we have marked as being excepted under section 552.107(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref: ID# 31505

Enclosures: Marked documents

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